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BICENTENNIAL OF THE CONSTITUTION

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

COMMEMORATION OF THE ANNIVERSARY OF THE CONSTITUTION AND THE APPROACHING BICENTENNIAL CELEBRATION

SEPTEMBER 17, 1985

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BICENTENNIAL OF THE CONSTITUTION

WEDNESDAY, SEPTEMBER 17, 1985

U.S. SENATE,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m. in room SR-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the subcommittee) presiding.

Also present: Senators Thurmond (chairman of full committee), Grassley, and DeConcini.

Staff present: Randall Rader, general counsel.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator HATCH. It is my pleasure to be with you as we commemorate the anniversary of the Constitution. One hundred and ninety-eight years ago today, the celebrated convention adopted the Constitution, a document that has set a daring and enduring example of representative democracy for the whole world. The bicentennial anniversary of this great document is swiftly approaching, and I think it is appropriate for all of us to pause and examine why it has been a lasting and momentous document.

Perhaps the most important reason that we look upon our Constitution with so much deserved pride is that it accomplished the goal enunciated by the Declaration of Independence of 1776. Specifically, it has protected the unalienable rights of man. The American people still believe, as they proclaimed in 1776, that governments are instituted to secure these rights.

These rights have been secure in America because the Constitution carefully defined the powers of the new government and dispersed them among three mutually checking and balancing branches. This diffusion of powers has operated for nearly two centuries to prevent the government or any part of it from becoming so powerful as to threaten society's basic rights.

Alexander Hamilton expressed this brave new concept concisely: "Despotism," he said, "is a government in which all power is concentrated in a single body. The Convention, therefore, divided the powers that each might be a check upon the other." Now, he made those remarks in the New York Ratifying Convention on June 20, 1788.

Today, we have with us five outstanding students who have done extensive studies on the topic of the constitutional doctrine of

checks and balances. We welcome them and look forward to their insights on this very important subject at this very important time in our country's history.

We will turn to Senator Grassley at this point for any comments he has, and then we will move to our first witness.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Well, Mr. Chairman, I am privileged to have one of my constituents, Stephen Kennedy from my State, as one of the participants in today's testimony. I am not going to delay the opening of it because I would like to have a chance to hear him before I go on to chair my own Subcommittee on Administrative Practice and Procedure, which is hearing some testimony today on defense procurement fraud, and I would like to have my statement placed in the record as if read before the committee.

Senator HATCH. We will be happy to do so. We will place your statement in the record.

[Prepared statement follows:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY

I would like to commend these young people here today for their interest in government and congratulate them for the excellence in the essays they prepared for this subcommittee hearing. Their participation demonstrates the immense knowledge each one of them possesses and also sets an example for other young Americans to follow.

1987 will mark the bicentennial of America's most precious document, the Constitution of the United States. The Constitution is one of the most important statements of human liberty ever devised by mortal men. It provides us with a plan for a democratic form of government, sets out our goals as a democratic society, and secures our freedoms as a people.

Today is the 198th anniversary of the Constitution of the United States. I might add that it can't be a bad day at all since it also happens to be my birthday. But the Constitution has been around a lot longer than I have.

In two years from now, 1987, we will celebrate the 200th anniversary of the Constitution. The Framers of the Constitution were indeed brave men to affix their signatures to this plan for America.

The Chairman of the convention that framed our Constitution was George Washington. On the back of his chair there was a painting of the sun as it appeared just above the horizon. When, after many months of wrangling and discussions which often threatened to break up the convention entirely, the Constitution was finally signed by the 39 delegates, Benjamin Franklin, then 83 years old, who had been a great stabilizing force in the convention, arose and said: "I have looked at that painting again and again. I have wondered whether it was a rising or a setting sun, but now I know it is a rising sun."

Today on our Constitution's anniversary we can look back and see that the sun Franklin spoke of has never shined with such favor. America has grown from a weak group of colonies into the greatest of all nations. Our people are determined to see that we never let that sun set.

I often wonder how our forefathers would react if they could only see the roads we've traveled to the present day. We've come a long way and accomplished much in our journey, but tomorrow awaits us and so do many new tasks. Our Constitution has allowed us to push forward with untiring efforts to reach our goals as a nation. But new challenges constantly await us, so our work will never be completed. In order to see that we continue to succeed we must keep our faith in ourselves and our country, we must offer new hope and opportunity, and more than anything keep our trust in God.

On this 198th anniversary of our Constitution we can be thankful for such a work of democratic art by our forefathers. America's plan is in our constitution, a Constitution pledged to the battle of human freedom.

Senator HATCH. To accommodate you and your busy schedule, Senator, we will call on Stephen J. Kennedy to be our first witness this morning and to present his paper entitled "Checks and Balances, the Heart of the Constitution."

Mr. Kennedy, we are happy to have you here. If you will sit right here in the middle. In fact, let us call all of you up to the table at this time, and then we will turn to Mr. Kennedy.

Once again we are delighted to have you people here with us. We commend you for your leadership in writing these essays and winning within your respective States. This Constitution Subcommittee hears all issues pertaining to the Constitution and we look forward to being enlightened further on the Constitution by you young people.

So, Mr. Kennedy, we will turn to you, after which we will hear from Kathleen Pearce, a representative from my own State of Utah. We are very happy to welcome you all here.

Mr. Kennedy, the floor is yours.

STATEMENT OF STEPHEN J. KENNEDY, OSAGE, IA

Mr. KENNEDY. British Prime Minister William Gladstone called it "the most wonderful work ever struck off at a given time by the brain and purpose of man." Worded more simply, this document, which was established to protect the individual rights of each citizen of the United States, has proven to be one of the most solid, secure, and enduring writings in the history of the world.

Today, many generations after the creation of this magnificent piece of literature and law, it is a thriving composition, which now, as always, is meeting the needs of a strong, changing, technological society. This much revered document, the Constitution of the United States, established a balanced National Government and the principles of democracy by dividing authority among three independent units. These three Federal divisions, the legislative branch, the judicial branch, and the executive branch, are kept tantamount by this unique separation of powers and its system of checks and balances.

The processes of checks and balances limit the powers of any branch of the National Government by requiring that each branch obtain the consent of the others to make its actions constitutional. These often complex operations keep the functions of the American Government flowing smoothly. The checks and balances of the U.S. Constitution seem to capture the American spirit of liberty, democracy, and the pursuit of freedom.

Article I, section 7 contains one of the most well-known checks in American Government, the Presidential veto. The veto is a political tool used by the President of the United States quite frequently. As the Chief Executive of such an influential nation, the President must invariably act with extreme discretion. A careless miscalculation or action could adversely affect the citizens of the United States and the people of the world. When the President feels that legislation presented to the Oval Office would have a negative influence on the populus, then it is his privilege and responsibility to reject that bill.

The same section of the Constitution that established the veto furnished, as well, a process by which the elected Senators and Representatives of the Nation could override the President's denial. This provision enables them to transform a bill into law after a two-thirds vote of approval in both Chambers of Congress has been acquired. This arduous and often tedious procedure enables the many diverse cultures and peoples of the United States, represented by their Congressmen and women, to have their opinions heard. Article II, section 7's demonstration of representative democracy truly conforms with American ideals.

The founders of the Constitution, shrewd men like Benjamin Franklin and Alexander Hamilton, were deliberately apprehensive while formulating methods for legislative progress. They were cognizant that laws approved by Congress and the President could on extreme occasions conflict with the Constitution. Realizing that laws passed hastily or without serious deliberation could significantly alter the atmosphere of the document, they created a safeguard against such a violation in article III, section 2. This provision declares that the Supreme Court of the United States maintains the ability to examine any legislative or executive deed and determine whether it violates the Constitution or any principle that it established. When a majority of the justices of the court do find an action to infringe upon the "Supreme Law of the Land," then that action is declared unconstitutional and is rendered null and void. This operation, referred to as judicial review, is the final and perhaps most critical obstacle in the law-making procedure. Judicial review has maintained throughout these many varying generations approximately the same Constitution that our forefathers established nearly 200 years ago, one of undeniable simplicity and overwhelming success.

Article II, section 2 gives the President the power to appoint all ambassadors, Supreme Court Justices, and all other high officials whose instatements are not otherwise provided for in the Constitution. This ability helps to maintain cooperation within the Federal Government and to ensure the harmonious relationships which are essential for efficiency in the Government. But this special right is restricted as well by a check in the same section which holds that all Presidential appointments must meet with the approval and consent of two-thirds of the Members of the Senate. This astute and well-placed provision helps to ensure the quality of the officials which shall guide the governmental policies of this grand Nation. The framers of the Constitution were truly sagacious when they perceived that the day may arrive when a nominee for appointment would not suffice as a leader of the people, and they managed this perplexing situation by providing that the elected representatives of the populus in the Senate would decide the case of the nominee's competency.

The creators of our Constitution would not tolerate extreme inabilities in the skills of leadership or any form of corruption in officials currently holding office in the Government, either. Article I, sections 2 and 3 clearly illustrate that fact. These two sections define the process of impeachment, an extremely infrequent procedure in which the House of Representatives shall bring the charges of incompetency against a Government official, and the Senate

shall try the accused on those charges. Only four times in national history has any person been convicted and removed from office. In each of those cases, the defendant was a Justice of the Supreme Court. The processes of impeachment help to ensure that those people in whose hands our Nation rests are hands of construction, not destruction. The rights of the people to question the sufficiency of those in office is one of uninterpretable value, it is a privilege that most of the people of the world cannot take advantage of.

Many foreign and domestic policies and programs are supported financially by the Government of the United States. Those activities affect people around the world and cost our Nation billions of dollars. But although we are a strong country endowed with wealth, the funds for those programs are certainly not readily available for utilization by the President or any other official in the United States. Article I, section 9 states that no allocation of funds is to be made without the consent and approval of both Chambers of Congress. Thus, each proposed plan of the American Government must go through circumstantial observations and be subjected to heated debate, either individually or lumped together with several other programs, before funds are appropriated to them. This essential check of the U.S. Constitution helps to secure a manageable Federal budget and to prevent a severe financial deficit from forming. The control by Congress of the allocation of funds helps to ensure that the programs and policies instituted by the Government of the United States are the programs and policies desired by the citizens of the United States. This segment of our governing document adds credibility to the seemingly ancient yet still applicable quote, "Here, sir, the people govern."

The checks and balances of the Constitution of the United States are the remarkable base of the American Government. Their magnificent stability has created a nation so rich in democracy and so preserving of human rights that it has set a precedent for all other peace-loving nations of the world to attempt to follow. The values of the checks and balances are evident. They have invented processes that control the legislation that goes into effect in this Nation by making all bills navigate tedious deliberation in Congress, the Oval Office, and in the Supreme Court. They have created a method to ensure that those persons in leadership positions are mentally competent and able to execute properly the functions of their occupation. They have developed a procedure by which the policies that our Nation adopts and chooses to finance have the approval of the citizens of the United States. They have built a nation that Thomas Jefferson, James Madison, Benjamin Franklin, and the rest of their companions at the Constitutional Convention at Philadelphia in 1787 would be truly proud of.

Yet, of all the checks and balances previously discussed so far, one has gone unmentioned. This check, elaborated in article II, section 1 and in amendment 12, is among the most noteworthy in the Constitution, for this check pertains to the direct election of the Senators, Representatives, Vice President, and President of the United States of America. It is the main check of the citizens on their Government. It is the provision that secures the liberty and freedom of the populus. It is the article that maintains the quality of our Government, and it is the entity that makes America, Amer-

ica. Without this portion of our Constitution, our leaders would be, in effect, accountable to no one. Corruption in Government would be possible. The suppression of the rights of the people could easily transpire. Our Nation could become what the settlers on Plymouth Rock fled so long ago.

Our Constitution is one of unique blessings, of special rights that only we possess. Our Constitution is one of amazing opportunities, of privileges that we have fought to preserve. Our Constitution is one of liberty and equality, of a magnificent system called the checks and balances.

[Prepared statement follows:]

PREPARED STATEMENT OF STEVEN J. KENNEDY

British Prime Minister William Gladstone called it, "the most wonderful work ever struck off at a given time by the brain and purpose of man".[1] Worded more simply, this document which was established to protect the individual rights of each citizen of the United States, has proven to be one of the most solid, secure and enduring writings in the history of the world.

Today, many generations after the creation of this magnificent piece of literature and law,[2] it is a thriving composition, which now as always is meeting the needs of a strong, changing, technological society. This much revered document, the Constitution of the United States, established a balanced national government and the principles of democracy by dividing authority among three independent units. These three federal divisions, the legislative branch, the judicial branch, and the executive branch are kept tantamount by this unique separation of powers and its system of checks and balances.

The processes of checks and balances limit the powers of any branch of the national government by requiring that each branch obtain the consent of the others to make its actions constitutional.[3] These often complex operations keep the functions of the American government flowing smoothly. The checks and balances of the United States Constitution seem to capture the American spirit of liberty, democracy and the pursuit of freedom.

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could adversely affect the citizens of the United States and the people of the world. When the President feels that legislation presented to the Oval Office would have a negative influence on the populus, then it is his privilege and responsibility to reject that bill.

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peachment help to insure that those people in whose hands our nation rests are hands of construction-- not destruction. The rights of the people to question the sufficiency of those in office is one of uninterpretable value, it is a privilege that most of the people of the world cannot take advantage of.

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Footnotes

[1]--Padover, Saul K. The Living U.S. Constitution. New York: The New American Library of World Literature, Inc., 1953. p.9.

[2]--The Constitutional Convention met on May 25, 1787 and adjourned on Sept. 17, 1787. The Constitution went into effect on June 21, 1788 when the ninth state ratified it.

[3]--Connery, Robert H. and Odegard, Peter H. "Government." The World Book Encyclopedia, 1978, Vol. 8, p. 280.

[4]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798i.

[5]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798i.

[6]--'founders of the Constitution': those 55 men who were delegates to the Constitutional Convention.

[7]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798l.

[8]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798l.

[9]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798l.

[10]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798g.

[11]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798h.

[12]--Rowe, Jonathan and Glastris, Paul. "Reagan Scorecard." The Washington Monthly, July 1984, p. 38.

[13]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, p. 798j.

[14]--Peltason, J.W. "Constitution of the United States." The World Book Encyclopedia, 1978, Vol. 8, pp. 798k & 798q.

Senator HATCH. Well, thank you, Mr. Kennedy. That is an excellent essay, and we appreciate the efforts that you put forth in your State to be able to win this contest. We are really proud to have you before the committee this morning.

I will now turn to Senator Grassley for any questions or comments he may have.

Senator GRASSLEY. I just have one question, and I am sorry I will not be available to ask others questions as well. And I want to say thank you to all of you and congratulations to all of you, but I am especially proud of Mr. Kennedy from my State.

On the question of checks and balances, do you have an opinion on restricting jurisdiction of certain issues from the Federal courts, particularly the Supreme Court, for review? Like, for instance, the Senate just voted on a bill that would restrict jurisdiction of the Supreme Court in school prayer issues.

Do you have any views on that line? I think you did touch on it shortly in your statement.

Mr. KENNEDY. I feel that anything that the Senate or the President proposes should be subjected to judicial review. That is a method that our Constitution established and that is a method that has worked for over 200 years. I feel that we need the added opinions of those men that know the law to ascertain that everything functions smoothly.

Senator GRASSLEY. Thank you very much.

Senator HATCH. Well, thank you. Thank you, Senator Grassley.

Senator Thurmond, who is the chairman of the full committee, we will turn to you at this time; then we will turn to Senator DeConcini in case he has any questions.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. Thank you very much, Mr. Chairman.

Mr. Chairman, it is a pleasure for me to be here this morning as we commemorate the 198th anniversary of our Nation's Constitution.

In 2 years we will celebrate the bicentennial of this great document. And I think it is the greatest document that has ever been penned by the mind of man for the governing of a people. This celebration, I believe, will be one of the most momentous occasions in the history of the United States.

The activities of this subcommittee today in stimulating study of the Constitution by our Nation's young people, is a perfect example of how the bicentennial can best be celebrated. In 1987, there will certainly be fireworks and parades and all of the usual and appropriate festive activities which surround a great event. I believe, however, that the bicentennial also provides an excellent opportunity for focusing the attention of our citizens, young and old, on the need for reflection and study of the Constitution.

Mr. Chairman, I am honored to be a member of the Commission on the Bicentennial of the Constitution, and I expect much of the activity of the Commission to be directed toward this educational

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goal. I have just come from a meeting of that Commission this morning.

The Commission is conducting hearings today at the Supreme Court to receive input from a number of organizations which are planning bicentennial programs or activities. The public is invited to attend those hearings.

Mr. Chairman, I want to congratulate the young people who are with us today. I highly commend them on a great achievement in having won the essay contest in their respective States. I hope that their study of article I, the powers and limitations of Congress, has stimulated their interest in the entire Constitution and will lead to their continuing education of the principles and concepts which make it such a great document.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Mr. Chairman.

We will turn to Senator DeConcini at this time. We have listened to Stephen J. Kennedy from Iowa as our first witness. Senator DeConcini, we now turn to you.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DECONCINI. Mr. Chairman, thank you; Senator Thurmond, chairman of the full committee, thank you. We are very pleased to have Keith Pinckard here today. He is from Mesa, Dobson High School, and we are proud of his winning essay. I had a chance to look at it last night, "The Value of the Constitution and the Checks and Balances System," and it is an outstanding piece of work.

Keith, we shall have the full text of your statement placed in the record. I do have a couple of questions, Mr. Chairman. One thing that is very important to me, and I think it is vital to students in school now, is whether or not their generation is receiving the educational instruction in the background and the principles of the Constitution. I welcome the time, Mr. Chairman, to hear from these students if they feel that they and their fellow students are receiving an adequate education in the principles of the Constitution. It is my belief, having visited a number of high schools, that the students are getting a pretty good background in our Constitution. Members of Congress can enhance the process by certain internships and other programs. I know the chairman of this committee has had a longstanding program of having literally dozens of interns visiting Washington during the summertime. I have emulated that as I know the chairman from Utah has. I am very interested in seeing internship programs expanded.

So, Keith, we welcome you here. We are proud of your winning the essay contest, and we look forward to your statement.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator DeConcini.

Let us now turn to Kathleen Pearce who is our essay winner from my State of Utah. Kathleen, you attend Mountview High School?

The CHAIRMAN. Senator Hatch, I have got to go to the floor on a bill at 10 o'clock. Would you mind if my student could go now?

Senator HATCH. Would you mind, Kathleen, if we defer you for a few minutes and let Senator Thurmond's student go first?

Ms. PEARCE. It is fine with me.

Senator HATCH. All right. I will introduce you a little bit later.

Let us then turn to Mr. Tony Vanias. Am I pronouncing that correctly?

Mr. VANIAS. Vanias.

Senator HATCH. We will turn to Mr. Tony Vanias who is from Columbia, SC, and we will take your testimony at this time.

The CHAIRMAN. Mr. Chairman, it is my pleasure to introduce to the subcommittee Tony Vanias of Columbia, SC.

Tony is a 1985 graduate of Lower Richland High School and has just begun his freshman year at Clemson University, one of the great institutions in this land.

Having read his essay, I am certain he will do very well at Clemson.

Tony, we are proud of you and certainly look forward to your presentation.

Senator HATCH. Tony, we are proud of you. We welcome you to the committee, and we are going to have to get you up here on Capitol Hill so you can get some more experience, now that you are at Clemson University.

I think that applies to all of you young people. You could really help us here on Capitol Hill with the Constitution.

We will turn to you, Tony. Go ahead and let us hear your statement this morning.

STATEMENT OF TONY VANIAS, COLUMBIA, SC

Mr. VANIAS. Unlike totalitarian systems, the political ideas of the United States cannot be traced to any one hero or document.

The Constitution of 1787 has antecedents reaching back to ancient Greece and Rome. In the 13th century St. Thomas Aquinas wrote "Summa Theologica" in which he followed Aristotle's idea of the existence of natural law and absolute justice, but Aquinas believed that they were derived from God. By the 17th century, Aquinas' ideas, which had been of profound importance in governmental theory for centuries, had developed into the idea that the king rules by divine right. Regardless of how unfair he might be, a rebellion against the king was a rebellion against God, who, it was thought, had established that particular king on that particular throne. In 1689 John Locke, an English philosopher, wrote his "Second Treatise on Civil Government" to justify the English Revolution of the year before, to reject the idea of the "divine rights of kings," and to dispute Aquinas' view of the origin of the state. Locke's ideas were the basis of the philosophical justification for the American Revolution, and his concept of the rights of man are basic to the Constitution. Locke stressed natural law and natural rights as limiting governmental power. By 1750, Locke's philosophy of revolution had already made its way into colonial thinking, but there had been no occasions to translate that theory into action anywhere in the Colonies. In 1620 the Pilgrims wrote and signed the Mayflower compact before they landed at Plymouth Rock. This agreement, signed by all men on the ship, set up a government and

made rules under which the colony would live. This is Locke's "social contract" theory in action. Under this theory, the only reason the government exists is to preserve the life, liberty, and property of the citizens, and it has no power except that which is used for the good of the people. The basic rights of the people, therefore, limit the power of the ruler, who has no right, divine or otherwise, to interfere with them. Locke's conclusion was that if the government breaks the trust of the people who establish it or if it interferes with the liberty of the citizens, they have the right to rebel and to make a new contract under which they may govern themselves more conveniently. This right to rebel was the theory behind our Declaration of Independence, which declared that the Colonies found government under the King of England to be highly inconvenient as well as detrimental to their liberties.

Our history as an independent Nation began on July 4, 1776, when the Declaration of Independence was signed by representatives of the Thirteen Colonies. At this point, although we declared ourselves free of English rule, there was, of course, no system of national government. The Second Continental Congress assembled to form a National Government. The Constitution of the United States, as a result of this and later assemblies, is the legal contract by which our country assures its democratic ideals by confining the powers of Government and by guaranteeing the rights of individuals. Because the Constitution contained what some statesmen considered loopholes and ambiguities, further interpretations were necessary. These more advanced interpretations are known as the Articles of Confederation.

The articles were presented to Congress in 1777 and ratified by all States except Maryland in 1778. Frightened of the abuse and advantage the Government would be guilty of, the articles were, therefore, written with the idea of restricting the power of the National Government as much as possible. In 1787 the Convention had been called to revise the articles, but once the delegates were assembled, they agreed that the same principle of the "right to rebel" which had been involved against the king would again apply, and since the Government established by the articles was no longer suited to the convenience of the people, they would create another one. They wrote our Constitution and developed the system of government under which we have lived for almost 200 years.

"What is the Constitution?" Justice William Paterson inquired in a Supreme Court opinion of 1795. "It is a form of government," he answered, "delineated by the mighty hand of the people, in which certain first principles of fundamental law are established." It also lists the aims of the Government and the methods of achieving them. The Constitution established not merely a league of States but a Government that exercised its authority directly over all citizens. The Constitution also defined clearly the powers of the National Government. In addition, it established protection for the rights of the States and of every individual.

The first three articles of the Constitution divide the powers of the U.S. Government among three separate branches: One, the legislative branch, represented by Congress; two, the executive branch, represented by the President; and three, the judicial

branch, represented by the Supreme Court. This division, called the separation of powers, is designed to prevent any branch of the Government from becoming too powerful.

Article I of the Constitution deals with the Congress, the legislative branch of the Federal Government, and it was this article that helped create the ongoing efficiency of our democracy. The Congress, rather than the President, is vested by the Constitution with the lawmaking function. This article describes the composition of the two Houses of Congress—the Senate and the House of Representatives—the requirements for election to either House, and the powers and duties of this branch of the Government. It also specifically forbids Congress and the States to do certain things.

Article I has also been divided into three separate powers. These powers are the expressed, implied, and inherent powers.

Expressed powers are those granted to Congress that are in the Constitution. An example of the expressed powers of Congress is the power to tax. The Constitution gives to Congress the power: "To lay and collect taxes, duties, impost, and excises, to pay the debts and provide for the common defense and general welfare of the United States * * *"

Implied powers are those that may reasonably be implied from the expressed powers. For instance, the Constitution does not expressly provide for river and harbor improvements, but the power is implied from the expressed powers to regulate commerce and to maintain a navy.

Inherent powers are those powers which belong to the National Government by virtue of its existence as the National Government of a sovereign state in the world community. The inherent powers are few in number. The chief ones include: The powers to regulate immigration, deport aliens, acquire territory, extend diplomatic recognition, and protect the Nation against rebellion or internal subversion.

The Constitution of the United States, therefore, is a document of great significance to our society and was written to organize a strong national government for the American States. Article I allows the operation of our Government to be ongoing, efficient, and flexible. Through this article, Congress is empowered to make laws that regulate the interactions of our Nation's citizens; however, Congress cannot give these powers to any other body of Government. Congress is elected by the individuals of our Nation and is limited in its powers by the constitutional checks and balances of the three separate branches. This country is a democratic world power whose foundation rests on a sound system of government under the jurisdiction of the Constitution. Article I established the laws by which Congress must abide to regulate the democratic society in which we have lived for almost the past 200 years.

[Prepared statement follows:]

Prepared Statement of Tony Vanias

Article I: The Powers and Limitations of Congress

Thesis: Article I of the Constitution of the United States deals with the Congress, the legislative branch of the federal government, and it was this article that helped create the ongoing efficiency of our democracy.

I. General backgrounds of the American democracy

II. The Constitution

A. Philosopical background

B. Historical background

III. Articles I, II, & III

IV. Article I

Article I: The Powers and Limitations of Congress

Unlike totalitarian systems, the politcal ideas of the United States cannot be traced to any one hero or document. The Constitution of 1787 has antecedents reaching back to ancient Greece and Rome.[1] In the 13th Century, St. Thomas Aquinas wrote Summa Theolgica in which he followed Aristotle's idea of the existence of natural law and absolute justice, but Aquinas believed that they were derived from God. By the 17th Century, Aquinas' ideas, which had been of profound importance in governmental theory for centuries, had developed into the idea that the king rules by Divine Right. Regardless of how unfair he might be, a rebellion against the king was a rebellion against God, who, it was thought, had established that particular king on that particular throne. In 1689 John Locke, an English philosopher, wrote his Second Treatise on Civil Government to justify the English Revolution of the year before, to reject the idea of the "Divine Rights of Kings," and to dispute Aquinas' view of the origin of the state. Locke's ideas were the basis of the philosophical justification for the American Revolution, and his concept of the rights of man are basic to the Constitution.[2] Locke stressed natural law and natural rights as limiting

governmental power. By 1750, Locke's philosophy of revolution had already made its way into colonial thinking, but there had been no occasion to translate that theory into action anywhere in the colonies.[3] In 1620 the Pilgrims wrote and signed the Mayflower Compact before they landed at Plymouth Rock. This agreement, signed by all men on the ship, set up a government and made rules under which the colony would live. This is Locke's "social contract" theory in action. Under this theory, the only reason the government exists is to preserve the life, liberty and property of the citizens, and it has no power except that which is used for the good of the people. The basic rights of the people, therefore, limit the power of the ruler, who has no right, Divine of otherwise, to interfere with them. Locke's conclusion was that if the government breaks the trust of the people who establish it or if it interferes with the liberty of the citizens, they have the right to rebel and make a new contract under which they may govern themselves more conveniently. This right to rebel was the theory behind our Declaration of Independence, which declared that the colonies found government under the King of England to be highly inconvenient as well as detrimental to their liberties.

Our history as an independent nation began on July 4, 1776, when the Declaration of Independence was signed by representatives of the thirteen colonies. At this point, although we declared ourselves free of English rule, there was, of course, no system of national government. The Second Continental Congress assembled to form a national government.[4] The Constitution of the United States, as a result of this and later assemblies, is the legal contract by which our country assures its democratic ideals by confining the powers of government and by guaranteeing the rights of individuals. Because the Constitution contained what some statesmen considered loopholes and ambiguities, further interpretations were necessary. These more advanced interpretations are known as the Articles of Confederation.

The Articles were presented to Congress in 1777 and ratified by all states except Maryland in 1778. Frightened of the abuse and advantage the government would be guilty of, the Articles were, therefore, written with the idea of restricting the power of the national government as much as possible. In 1787 the convention had been called to revise the Articles, but once the delegates were assembled, theyagreed that the same principle of the "right to rebel" which had been involved against the king would again apply, and since the government established by the Articles was no longer suited to the convenience of the people, they would create another one. They wrote our Constitution and developed the system of government under which we have lived for almost 200 years.[5]

"What is the Constitution?" Justice William Paterson inquired in a Supreme Court opinion of 1795. "It is a form of government," he answered, "delineated by the mighty hand of the people, in which certain first principles of fundamental law are established."[6] It also lists the aims of the government and the methods of achieving them.[7] The Constitution established not merely a league of states but a government that exercised its authority directly over all citizens. The Constitution also defined clearly the powers of the national government. In addition, it established protection for the rights of the states and of every individual.[8]

The first three articles of the Constitution divide the powers of the United States government among three separate branches: (1) the legislative branch, represented by Congress: (2) the executive branch, represented by the President; and (3) the judicial branch, represented by the Supreme Court. This division, called the separation of powers, is designed to prevent any branch of the government from becoming too powerful.[9]

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cracy. The Congress, rather than the President, is vested by the Constitution with the lawmaking function. This article describes the composition of the two Houses of Congress (the Senate and the House of Representatives), the requirements for election to either House and the powers and duties of this branch of the government. It also specifically forbids Congress and the states to do certain things.[10]

Article I has also been divided into three separate powers. These powers are the expressed, implied, and inherent powers.

Expressed powers are those granted to Congress, that are in the Constitution. An example of the expressed powers of Congress is the power to tax.[11] The Constitution gives to Congress the power: "To lay and collect taxes, duties, impost, and excises, to pay the debts and provide for the common defence and general welfare of the United States. . ."[12]

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The Constitution of the United States, therefore, is a document of great significance to our society, and was written to organize a strong national government for the American states. Article I allows the operation or our government to be ongoing, efficient, and flexible. Through this Article, Congress is empowered to make laws that

regulate the interactions of our nation's citizens; however, Congress cannot give these powers to any other body of government. Congress is elected by the individuals of our nation and is limited in its powers by the constitutional checks and balances of the three separate branches. This country is a democratic world power whose foundation rests on a sound system of government under the jurisdiction of the Constitution. Article I established the laws, by which Congress must abide, to regulate the democratic society in which we have lived for almost the past 200 years.

Footnotes

[1]"Constitution of the United States." Collier's Encyclopedia. 1974, p. 230.

[2]Holder, Angela Roddey. The Meaning of the Constitution. New York: Barron's Educational Series, Inc., 1974, p. 1.

[3]"Constitution of the United States." Collier's Encyclopedia. 1974, pp. 230-231.

[4]Holder, pp. 2-3.

[5]Holder, pp. 2-3.

[6]"Constitution of The United States." Collier's Encyclopedia. 1974, p. 235.

[7]"Constitution of the United States." World Book. 1978, p. 798.

[8]"Constitution of The United States." World Book, p. 798.

[9]"Constitution of the United States." World Book. 1978, p. 798f.

[10]Holder, p. 20.

[11]McClenaghan, William A. Magruder's American Government. Boston: Allyn and Bacon, Inc., 1978, p. 333.

[12]McClenaghan, n. 740(Article I, Section 8, Clause 11.

[13]McClenaghan, p. 345.

[14]McClenaghan, p. 82.

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Senator HATCH. Thank you, Mr. Vanias.

The CHAIRMAN. I want to congratulate you for such a splendid essay.

I have got to go to the Senate floor now, but it was a pleasure to be here and to hear you present that, and I want to congratulate all these young people on participating in this. I think it is mighty fine.

We have got the greatest country in the world, and the reason we have is because of the Constitution under which we live.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Mr. Chairman. We are happy to have you here.

We appreciated that excellent essay, Mr. Vanias, both of these first two essays have been very good.

To accommodate Senator DeConcini, who has to be at another place and who has a very busy schedule this morning, we will call now on Mr. Keith Pinckard from Mesa, AZ, who has attended Dobson High School. We are very happy to welcome you here, and we will look forward to taking your testimony at this time, Keith.

Senator DECONCINI. Mr. Chairman, if I could, before Keith speaks, if I could put this in the record at this time and apologize for imposing once again on the young lady who is sitting there very patiently. I have to go to another subcommittee in about—well, 5 minutes ago. It is just a courtesy that I do want to listen to my winning essay contestant here.

So thank you very much. Thank you, Mr. Chairman.

Senator HATCH. Please proceed, Mr. Pinckard.

STATEMENT OF KEITH PINCKARD, MESA, AZ

Mr. PINCKARD. The Constitution of the United States is a very valuable document, for without it, this country would have no backbone.

The Constitution has helped, if not been a leading factor of the United States' becoming a world power. In approximately 200 years, the Constitution has proven itself to be a very successful document and has been very effective in organizing the Government of our country. One of its most successful points is the checks and balances system.

With the checks and balances system, each of the three branches of Government, the executive, the legislative, and the judicial, can control and prevent one another from gaining too much power. The executive branch can propose or veto legislation, call special legislative sessions, recommend appointments, negotiate foreign treaties, appoint Federal judges, and grant pardons and reprieves to Federal offenders. The legislative branch can pass legislation, override a Presidential veto, confirm executive appointments, ratify treaties, appropriate money, impeach and remove a President, create lower Federal courts and judgeships, impeach judges, propose constitutional amendments to overrule judicial decisions, and approve appointments of Federal judges. The judicial branch can declare executive actions and laws unconstitutional, and declare legislation from Congress unconstitutional.

In reality, a multibranched system of government is the only way to have a true democracy. Even if one chief executive were elected, it would still be more like a dictatorship without additional branches of government. The Constitution was designed specifically so that tyranny would not result. The writers of the Constitution were especially careful in creating this system, for the country had just won a war to be freed from a tyrannical form of government. They wanted to be sure that this sort of thing did not happen again. Throughout history, the checks and balances system has done exactly what it was designed to do.

For example, during the Great Depression, the Supreme Court realized that an expansion of Federal power was necessary to deal with this crisis. However, several pieces of New Deal legislation were declared unconstitutional, which is an example of the judicial powers of the checks and balances system. Of the nine Supreme Court Justices, four of them usually supported New Deal legislation, but were canceled out by the "Four Horsemen," or the conservative Justices. The remaining decision was usually left to Justice Owen Roberts. However, he usually voted with the conservatives.

For example, on May 27, 1935, the National Industrial Recovery Act was declared unconstitutional because of the case of *Shechter* v. *United States*. Shechter, a chicken processor, had been convicted of breaking one of the NRA's codes. The NRA was declared unconstitutional because the Federal Government had no power to regulate intrastate trade.

In 1936 the Supreme Court declared the Agricultural Adjustment Act unconstitutional. This act paid farmers to destroy part of their crops in order to avoid a surplus, therefore increasing the prices. However, the Federal Government had to levy a tax in order to pay the farmers. The Supreme Court declared this unconstitutional because the Federal Government had taken money from one group for the benefit of another.

President Franklin Roosevelt felt that these decisions were old-fashioned or too conservative and felt that if the New Deal were to succeed, he would need a more liberal Supreme Court. In February 1937, the beginning of his second term, Roosevelt asked Congress to redesign the judiciary system. His justification was that there were too few judges, creating lengthy delays before cases could be dealt with. He also wanted the power to appoint one new judge for every existing judge over the age of 70 or who refused to retire. This would make the maximum number of Supreme Court justices 15 instead of 9. In this way he could appoint younger, more liberal judges who would favor his legislation.

However, Roosevelt's plan did not work. It was recognized as a blatant attempt to overstep his power as the Chief Executive, upsetting the checks and balances system. After 6 months, he withdrew his proposal. His attempt to change the Supreme Court caused him to lose many supporters.

Another prime example of the checks and balances system is when Congress impeached Andrew Johnson. After the Civil War, Congress wanted to control Reconstruction. In order to keep their supporters in his administration, they passed the Tenure of Office Act, which would not allow the President to remove anyone from a

position appointed by the President without the Senate's consent. Johnson tested this by removing Secretary of War Edwin Stanton. Because this was a misdemeanor, Congress impeached Johnson on May 25 and 26, 1868. However, they were one vote short of removing President Johnson from office.

Perhaps the efficiency of the checks and balances system could be improved upon. For example, at the present time, if the President would like to pass a new piece of legislation, he proposes it to Congress. If one House passes it, then it must be sent to the other House to be passed. If the second House passes it, it must be sent back to the President, he signs it, and it becomes law.

On the other hand, if one House of Congress proposes new legislation and that House passes it, it must then go to the other House. If it passes there, it must be sent to the President. If he signs it, it becomes law. However, if he vetoes it, it must be sent back to the House where it was originated. If it passes in both Houses by a two-thirds vote, then it overrides a Presidential veto and becomes law.

With all of these steps required to pass legislation, it takes a very long time to get anything done, as was President Roosevelt's complaint. If, at the time new legislation were proposed and passed by Congress, a certain number of representatives from both Houses of Congress to be elected from within the Congress, the President and the Supreme Court Justices convened in one building, the proposed legislation would not have to be sent around from place to place waiting to be accepted or vetoed. It could be presented and discussed by the representatives of both Houses and the President. The Supreme Court Justices could be there to make sure that the proposed legislation was constitutional. If the President disagreed with the legislation, they could discuss it and possibly alter it there instead of sending it back and forth. President Roosevelt might have benefited from this plan. The checks and balances system would still work the same way; the only change would be faster, more efficient legislation.

Unfortunately, there is nothing in the Constitution or the checks and balances system providing for such things as overspending by the Government. For a country having a $175-billion deficit, our Government cannot afford to be spending $800 for a wrench or $600 for a toilet seat cover. It is understandable that there will be some red tape, but paying those atrocious prices is not justified.

Another example of the Constitution's lack of control of Government spending is the defense budget. Mutual deference, the amount of nuclear arms needed by the United States and the Soviet Union, is approximately 200 for each country. The United States has many more than 200 and continues to build more at the average rate of 5 per day. This spending is ridiculous. The Constitution would be much more valuable if it provided spending control for such things.

All in all, the good points of the Constitution and the checks and balances system outweigh its faults, which any system will have. This country is proof itself that democracy run by our Constitution works; it is stable and it gets things done. These qualities put a very high value on the Constitution and the system of checks and balances. After all, the Constitution carried this country from

being a new nation to a world power in approximately 200 years with only 26 amendments; that is quite impressive.

[Prepared statement follows:]

PREPARED STATEMENT OF KEITH PINCKARD

THE VALUE OF THE CONSTITUTION AND THE CHECKS AND BALANCES SYSTEM

The Constitution of the United States is a very valuable document, for without it, this country would have no backbone. The Constitution has helped, if not been a leading factor of the United States' becoming a world power. In a little over 200 years, the Constitution has proven itself to be a very successful document and has been very effective in organizing the government of our country. One of its most successful points is the checks and balances system.

With the checks and balances system, each of the three branches of government, the executive, the legislative, and the judicial, can control and prevent one another from gaining too much power. The executive branch can propose or veto legislation, call special legislative sessions, recommend appointments, negotiate foreign treaties, appoint federal judges, and grant pardons and reprieves to federal offenders. The legislative branch can pass legislation, override a presidential veto, confirm executive appointments, ratify treaties, appropriate money, impeach and remove a president, create lower federal courts and judgeships, impeach judges, propose constitutional ammendments to overrule judicial decisions, and approve appointments of federal judges. The judicial branch can declare executive actions and laws unconstitutional, and declare legislation from Congress unconstitutional.

In reality, a multi-branched system of government is the only way to

have a true democracy. Even if one chief executive were elected, it would still be more like a dictatorship without additional branches of government. The Constitution was designed specifically so that tyranny would not result. The writers of the Constitution were especially careful in creating this system, for the country had just won a war to be freed from a tyrannical form of government. They wanted to be sure that this sort of thing didn't happen again. Throughout history, the checks and balances system has done exactly what it was designed to do.

For example, during the Great Depression, the Supreme Court realized that an expansion of Federal power was necessary to deal with this crisis. However, several pieces of New Deal legislation were declared unconstitutional, which is an example of the judicial powers of the checks and balances system. Of the nine Supreme Court justices, four of them usually supported New Deal legislation, but were cancelled out by the "Four Horsemen", or the conservative justices. The remaining decision was usually left to Justice Owen Roberts. However, he usually voted with the Supreme Court justices 15 instead of 9. In this way he could appoint younger, more liberal judges who would favor his legislation.

However, Roosevelt's plan did not work. It was recognized as a blatant attempt to overstep his power as the chief executive, upsetting the checks and balances system. After 6 months, he withdrew his proposal. His attempt to change the Supreme Court caused him to lose many supporters.

Another prime example of the checks and balances system is when Congress impeached Andrew Johnson. After the Civil War, Congress wanted to control Reconstruction. In order to keep their supporters in his

administration, they passed the Tenure of Office Act, which would not allow the president to remove anyone from a position appointed by the president without the Senate's consent. Johnson tested this by removing Secretary of War, Edwin Stanton. Because this was a misdemeanor, Congress impeached Johnson on May 25 and 26, 1868. However, they were one vote short of removing President Johnson from office.

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Senator HATCH. Thank you.

We will turn to Senator DeConcini.

Senator DECONCINI. Mr. Chairman, thank you very much. Keith, thank you.

Let me just quickly applaud your various statements. I think you have an innovative approach there. Constitutional scholars will certainly argue with you that mixing the three branches in the process might not stand up to separation of powers theories system, but it certainly is worthwhile to think about and to work on.

Let me just quickly ask you if you think your fellow students in the generation you represent receive sufficient educational instructions on the background and principles of the Constitution?

Mr. PINCKARD. Well, it is covered in history classes, but I do not think enough. The class does not provide enough background on the document.

Senator DECONCINI. It could be more.

Mr. PINCKARD. Yes, it could. Definitely.

Senator DECONCINI. Do you think we need more classes and participation in a program that exposes students to it?

Mr. PINCKARD. Well, the Constitution should be integrated more into the classes themselves. It is not taught very much. There are enough classes; this subject just needs to be included in the classes.

Senator DECONCINI. Thank you.

Mr. Chairman, thank you very much for your leadership in this effort, and particularly the courtesy you have extended to my Arizonan here and myself.

Senator HATCH. Thank you, Senator DeConcini. Senator DeConcini is the ranking minority member on this subcommittee and was my chairman a few years back, and we have always worked very well together because of his great love for the Constitution and his country. You have a great senator, and we appreciate you being here. It is a real tribute to each of you young people to have this opportunity to testify before the Constitution Committee.

Well, at this point we will now turn to our fellow Utahan, Kathleen Pearce. Kathleen, we are really happy to welcome you. We have turned to you about three times this morning before we have finally gotten to you, but we are very pleased to have you here.

You have won this very competitive competition. There were a lot of good people who wrote good essays, and you came out No. 1 by our distinguished panel of judges. So I just want to compliment you and tell you I am very proud to have you here representing our State before this committee.

So we will turn to you at this time.

STATEMENT OF KATHLEEN PEARCE, LOGAN, UT

Ms. PEARCE. Well, first off, I would like to say thank you very much. It is still kind of hard for me to believe I am here. And I would like to say good morning.

Senator HATCH. Good morning. We are happy to have you here.

Ms. PEARCE. "Give me your tired, your poor, your huddled masses yearning to breathe free. The wretched refuse of your teeming shore, send these, the homeless, the tempest-tossed to me."

This quote, written by Emma Lazarus and inscribed upon the book held by Lady Liberty in New York's harbor, has inspired millions of people to come to America's shores and become one of her people.

America has always been thought of as the "Land of Opportunity," a place where dreams come true. What is it that makes America so unique? The answer is her Government. Throughout the world's history, there has never been a government quite like that of the Americans. Some are close, such as England's Parliament and the Congress of Ancient Rome, but none have had such an intricate system of separation/dependence. To fully understand the system of checks, balances, and separation, one must begin at the origins.

It all began with one of the greatest Greek historians, a man called Polybius, who lived from 204 to 122 B.C. During his lifetime, Greece was conquered by Rome, and Polybius was shipped to the Roman capital. He became an ally of Rome and went on to various diplomatic missions to Europe, Asia, and Africa. His wide travels resulted in his studying various forms of government and thus being able to make a knowledgeable decision on what form would work best.

Polybius came up with the idea of a mixed government, consisting of the executive power of a monarchy; the vested interests of the wealthy would be represented in the Senate, and the populace itself would have a voice in the popular assembly. Polybius believed that if these were set up as equals, but functioned with a counterbalance to restrain each from gaining too much power, the government should function to govern without abusing the people.

The idea of a mixed government essentially died with Polybius. Shortly after his death, Rome threw out the idea of democracy in general and appointed an emperor.

Until the mid-1700's the idea was forgotten. Then a young man called Baron Charles De Montesquieu resurrected the idea. He spent approximately 20 years abroad in England and continental Europe in research, eventually bringing forth his book on philosophical history called "The Spirit of Laws." His book has been described as "one of the most important books ever written," and "the greatest book of the French 18th century." Montesquieu's book was full of praise for the English system, and though not popular in France, was famous elsewhere.

Montesquieu shared Polybius' vision of having three departments of government, but saw them more along the lines of the executive, legislature, upper and lower houses, and an independent judiciary. England, he felt, was moving in the right direction, but was not quite there. To quote Montesquieu:

> When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty . . . lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner . . . Again, there is no liberty if the judiciary power be not separated from the legislative and executive.

As was proved in the Roman democracy, there can only be one executive. In Greece alone, at one time there were 30 executives. In times of crisis, there must need be only one executive to make deci-

sions quickly, and that person cannot escape praise, criticism, or consequences for the action.

In book XI of "The Spirit of Laws," Montesquieu lays down the ingredients for a model constitution. Although the final products of the Founding Fathers are guidelines for a new, radical, and free form of government, the first credit must be given to Baron Montesquieu for inspiring the Founding Fathers on how to go about writing the U.S. Constitution.

When the Constitution was being written, there was undoubtedly opposition and criticism. John Adams, one of the first advocates of a "mixed" constitution, once said that it was his dream "to see rising in America an empire of liberty, and the prospect of two or three hundred millions of free men, without one noble or king among them."

Various criticisms have been made by everyone from Walter Bagehot, a well-known Government writer in the 19th century, to Englishman James Bryce. Bagehot considered the American Constitution inferior to that of England's.

> The English system is framed on the principle of choosing a single sovereign authority, the House of Commons, and making it good; the American on the principle of having many sovereign authorities and hoping that their multitude may atone for their inferiority.

Bryce, on the other hand, was a great admirer of the American Constitution, and in his famous book, "The American Commonwealth," rated it "above every other written constitution."

John Lilburne, a Leveller leader during the English Civil War, was brought before a Committee of Examination in the House of Commons. He protested that the trial was unfair, in that his judges were also his lawmakers, therefore being biased. Because of this, the committee could not try him unless being bound by the same rules as other courts, and demonstrating the need of a separate judicial branch. Lilburne asserted that "rule first stated in 1645 that legislators should not be justices, for they would execute the law as well as make it." He further added that the legislators, as well as being judges, should not be administrators. For if they both made and could "execute the law, they might do palpable injustice and maladminister it * * * they would vote that man a traitor and destroy him."

In the case of John Lilburne, it is apparent that there must be a separation in responsibilities for "the accumulation of all powers—legislative, executive, and judiciary in the same hands * * * may be justly pronounced the very definition of tyranny."

Thomas Jefferson proposed that from Virginia's example, separation of powers would not last without a system of checks and balances, especially toward the legislative branch. For example, the President has a check on the legislative branch by putting a veto on legislation. In turn, the Congress can overturn his veto by a two-thirds joint—both Houses—majority vote. The judicial branch can keep the President and Congress in line by declaring a piece of legislation unconstitutional. The judicial is kept in check by constitutional amendments, as with the amendment concerning income tax. The Congress has further checks on the President by requiring a two-thirds joint majority vote on all appointments, a two-thirds majority vote is required to pass all treaties, and the House of Rep-

resentatives has the power to stop the spending of public funds if it is deemed that they are being spent impractically. Further powers of the legislative and executive branches of checking the judicial includes the Congress deciding what kinds of cases the Federal courts will hear, and with the exception of the Supreme Court, the Congress controls the existence of all other Federal courts. Upon the President falls the burden of enforcing those decisions of the courts. For example, the 1960's Supreme Court decision in the case of *Brown* v. *the Board of Education of Topeka* overturned the 1896 decision of *Plessy* v. *Ferguson* in that the separate facilities for black and white people is not equal just by virtue of the fact that it is separate. When the decision was made for desegregation in Little Rock, AR, the President was forced to send in the National Guard to keep down rioting.

Aside from powers given to each area to keep check on the other two, each has powers of its own. For example, Congress has the power to declare war, allocate money to that war, and can impeach a President. By the Constitution, the President is charged to recommend to Congress "* * * such measures as he shall judge necessary * * * (and to) take care that the laws be faithfully executed." This means that the President, with the help of his advisors, formulates a plan of legislation to submit to Congress. When the President submits his plan, his Cabinet—advisors—is not allowed to sit in on the session to help in the enactment of the program.

Of course, there are some holes in the system, as in all forms of government since the beginning of time. For example, the Gulf of Tonkin Resolution in 1964. This was passed by a near unanimous vote in Congress and virtually gave the President a free hand in sending troops to guard Vietnam from Communist aggression. Together with this power and a large military budget, Presidents Lyndon B. Johnson and Richard M. Nixon waged a war costly in both money and lives thousands of miles from American shores with not so much as a formal declaration of war from Congress. Because the Vietnam experience has ever since been a black mark on American history, the power of the President to send peacekeeping forces has been both doubted and protested.

In the first three articles of the Constitution, it outlines the responsibilities of the legislative, executive, and judicial branches respectively. It lists powers granted to each and checks over the other two. According to Justice William Paterson in 1795, "It is the form of government delineated by the mighty hand of the people, in which certain first principles of fundamental law are established."

So what does make America so special? What is it that makes thousands of people come to a new land to start with nothing? The answer is simple free agency. America is unique in that a person may belong to any religion they wish, Christian, Moslem, atheist, whatever. They may belong to any political party they wish, Republican, Democrat, Communist, Nazi, Freedom, whatever. They may go anywhere they wish, talk to anyone they meet. And no matter what it is that they choose to do with their life in America, they will never have the fear of government oppression, because of a simple, yet extremely complex system of government, with a built-in safety precaution called "checks and balances."

[Prepared statement follows:]

PREPARED STATEMENT OF KATHLEEN PEARCE

CHECKS AND BALANCES

"...GIVE ME YOUR TIRED, YOUR POOR,
YOUR HUDDLED MASSES YEARNING TO BREATHE FREE.
THE WRETCHED REFUSE OF YOUR TEEMING SHORE.
SEND THESE, THE HOMELESS, TEMPEST-TOST TO ME."

THIS QUOTE, WRITTEN BY EMMA LAZARUS AND INSCRIBED UPON THE BOOK HELD BY "LADY LIBERTY" IN NEW YORK'S HARBOR, HAS INSPIRED MILLIONS OF PEOPLE TO COME TO AMERICA'S SHORES AND BECOME ONE OF HER PEOPLE.

AMERICA HAS ALWAYS BEEN THOUGHT OF AS THE "LAND OF OPPORTUNITY," A PLACE WHERE DREAMS COME TRUE. WHAT IS IT THAT MAKES AMERICA SO UNIQUE? THE ANSWER IS HER GOVERNMENT. THROUGHOUT THE WORLD'S HISTORY, THERE HAS NEVER BEEN A GOVERNMENT QUITE LIKE THAT OF THE AMERICANS. SOME ARE CLOSE, SUCH AS ENGLAND'S PARLIAMENT AND THE CONGRESS OF ANCIENT ROME, BUT NONE HAVE HAD SUCH AN INTRICATE SYSTEM OF SEPARATION/DEPENDENCE. TO FULLY UNDERSTAND THE SYSTEM OF CHECKS, BALANCES, AND SEPARATION, ONE MUST BEGIN AT THE ORIGINS.

IT ALL BEGAN WITH ONE OF THE GREATEST GREEK HISTORIANS, A MAN CALLED POLYBIUS, WHO LIVED FROM 204 TO 122 B.C. DURING HIS LIFETIME, GREECE WAS CONQUERED BY ROME, AND POLYBIUS WAS SHIPPED TO THE ROMAN CAPITAL. HE BECAME AN ALLY OF ROME, AND WENT ON VARIOUS DIPLOMATIC MISSIONS TO EUROPE, ASIA, AND AFRICA. HIS WIDE TRAVELS RESULTED IN HIS STUDYING VARIOUS FORMS OF GOVERNMENT, AND THUS BEING ABLE TO MAKE A KNOWLEDGEABLE DECISION ON WHAT FORM WOULD WORK BEST.

POLYBIUS CAME UP WITH THE NEW IDEA OF A "MIXED" GOVERNMENT, CONSISTING OF THE EXECUTIVE POWER OF A MONARCHY! THE VESTED INTERESTS OF THE WEALTHY WOULD BE REPRESENTED IN THE SENATE, AND THE POPULACE ITSELF WOULD HAVE A VOICE IN THE POPULAR ASSEMBLY. POLYBIUS BELIEVED THAT IF THESE WERE SET UP AS EQUALS, BUT FUNCTIONED WITH A "COUNTER-BALANCE" TO RESTRAIN EACH FROM GAINING TOO MUCH POWER, THE GOVERNMENT SHOULD FUNCTION TO GOVERN WITHOUT ABUSING THE PEOPLE.

THE IDEA OF A "MIXED" GOVERNMENT ESSENTIALLY DIED WITH POLYBIUS. SHORTLY AFTER HIS DEATH, ROME THREW OUT THE IDEA OF DEMOCRACY IN GENERAL AND APPOINTED AN EMPEROR.

UNTIL THE MID-1700'S THE IDEA WAS FORGOTTEN. THEN A YOUNG MAN CALLED BARON CHARLES DE MONTESQUIEU RESURRECTED THE IDEA. HE SPENT APPROXIMATELY 20 YEARS ABROAD IN ENGLAND AND CONTINENTAL EUROPE

IN RESEARCH, EVENTUALLY BRINGING FORTH HIS BOOK ON PHILOSOPHICAL HISTORY CALLED "THE SPIRIT OF LAWS." HIS BOOK HAS BEEN DESCRIBED AS "...ONE OF THE MOST IMPORTANT BOOKS EVER WRITTEN." AND "...THE GREATEST BOOK OF THE FRENCH 18TH CENTURY."[1] MONTESQUIEU'S BOOK WAS FULL OF PRAISE FOR THE ENGLISH SYSTEM, AND THOUGH NOT POPULAR IN FRANCE, WAS FAMOUS ELSEWHERE.

MONTESQUIEU SHARED POLYBIUS' VISION OF HAVING THREE DEPARTMENTS OF GOVERNMENT, BUT SAW THEM MORE ALONG THE LINES OF THE EXECUTIVE LEGISLATURE (UPPER AND LOWER HOUSES), AND AN INDEPENDENT JUDICIARY. ENGLAND, HE FELT, WAS MOVING IN THE RIGHT DIRECTION, BUT WAS NOT QUITE THERE. TO QUOTE MONTESQUIEU:

> "WHEN THE LEGISLATIVE AND EXECUTIVE POWERS ARE UNITED IN THE SAME PERSON, OR IN THE SAME BODY OF MAGISTRATES, THERE CAN BE NO LIBERTY;...LIKEWISE THE SAME MONARCH OR SENATE SHOULD NEVER PASS GENERAL LAWS, TO EXECUTE THEM IN A TYRANNICAL MANNER, ...AGAIN, THERE IS NO LIBERTY IF THE JUDICIARY POWER BE NOT SEPARATED FROM THE LEGISLATIVE AND EXECUTIVE."[2]

AS WAS PROVED IN THE ROMAN DEMOCRACY, THERE CAN ONLY BE ONE EXECUTIVE. IN GREECE ALONE, AT ONE TIME THERE WERE 30 EXECUTIVES. IN TIMES OF CRISIS, THERE MUST NEEDS BE ONLY ONE EXECUTIVE TO MAKE DECISIONS QUICKLY, AND THAT PERSON CANNOT BECOME TYRANNICAL OR CONSCIENCELESS FOR THE ACTION.

IN BOOK XI OF "THE SPIRIT OF LAWS," MONTESQUIEU GIVES SOME THE INGREDIENTS FOR A MODEL CONSTITUTION. ALTHOUGH THE FINAL PRODUCTS OF THE FOUNDING FATHERS ARE OUTDATED FOR A MODERN, RADICAL, AND FREE FORM OF GOVERNMENT, THE FIRST CREDIT MUST BE GIVEN TO BARON MONTESQUIEU FOR INSPIRING THE FOUNDING FATHERS ON HOW TO GO ABOUT WRITING THE UNITED STATES CONSTITUTION.

WHEN THE CONSTITUTION WAS BEING WRITTEN, THERE WAS CONSIDERABLE OPPOSITION AND CRITICISM. JOHN ADAMS, ONE OF THE FIRST ADVOCATES OF A "MIXED" CONSTITUTION, ONCE SAID THAT IT WAS HIS IDEAL "...TO SEE KINGS IN ENGLAND AS SPIRITS OF LIBERTY, AND THE PEERAGE OF THAT AS THREE HUNDRED MILLIONS OF FREE MEN, WITHOUT ONE NOBLE TO LORD AMONG THEM."[3]

VARIOUS CRITICISMS HAVE BEEN MADE OF DIVIDING POWER BETWEEN SEVERAL WELL-KNOWN GOVERNMENT HEADS IN THE 18TH CENTURY. TO ENGLISHMAN JAMES BOYCE, SWARMS CONSIDERED THE AMERICAN CONSTITUTION INFERIOR TO THAT OF ENGLAND'S. "THE ENGLISH SYSTEM IS FRAMED SO THE EXECUTIVE

OF CHOOSING A SINGLE SOVEREIGN AUTHORITY (THE HOUSE OF COMMONS) AND MAKING IT GOOD; THE AMERICAN ON THE PRINCIPLE OF HAVING MANY SOVERIGN AUTHORITIES AND HOPING THAT THEIR MULTITUDE MAY ATONE FOR THEIR INFERIORITY." BRYCE, ON THE OTHER HAND, WAS A GREAT ADMIRER OF THE AMERICAN CONSTITUTION, AND IN HIS FAMOUS BOOK, "THE AMERICAN COMMONWEALTH" RATED IT "ABOVE EVERY OTHER WRITTEN CONSTITUION."[4]

JOHN LILBURNE, A LEVELLER LEADER DURING THE ENGLISH CIVIL WAR, WAS BROUGHT BEFORE A COMMITTEE OF EXAMINATION IN THE HOUSE OF COMMONS. HE PROTESTED THAT THE TRIAL WAS UNFAIR, IN THAT HIS JUDGES WERE ALSO HIS LAWMAKER, THEREFORE BEING BIASED. BECAUSE OF THIS, THE COMMITTEE COULD NOT TRY HIM UNLESS BEING BOUND BY THE SAME RULES AS OTHER COURTS, AND DEMONSTRATING THE NEED OF A SEPARATE JUDICIAL BRANCH. LILBURNE ASSERTED THAT "...RULE FIRST STATED IN 1645 THAT LEGISLATORS SHOULD NOT BE JUSTICES, FOR THEY WOULD EXECUTE THE LAW AS WELL AS MAKE IT."[5] HE FURTHER ADDED THAT THE LEGISLATORS, AS WELL AS BEING JUDGES, SHOULD NOT BE ADMINISTRATORS. FOR IF THEY BOTH MADE AND COULD "EXECUTE THE LAW, THEY MIGHT DO PALPABLE INJUSTICE AND MALADMINISTER IT...THEY HOULD VOTE THAT MAN A TRAITOR AND DESTROY HIM."[6]

IN THE CASE OF JOHN LILBURNE, IT IS APPARENT THAT THERE MUST BE A SEPARATION IN RESPONSIBILITIES FOR "...THE ACCUMULATION OF ALL POWERS--LEGISLATIVE, EXECUTIVE, AND JUDICIARY IN THE SAME HANDS... MAY BE JUSTLY PRONOUNCED THE VERY DEFINITION OF TYRANNY."[7]

THOMAS JEFFERSON PROPOSED THAT FROM VIRGINIA'S EXAMPLE, SEPARATION OF POWERS WOULD NOT LAST WITHOUT A SYSTEM OF CHECKS AND BALANCES, ESPECIALLY TOWARD THE LEGISLATIVE BRANCH. FOR EXAMPLE, THE PRESIDENT HAS A CHECK ON THE LEGISLATIVE BRANCH BY PUTTING A VETO ON LEGISLATION. IN TURN THE CONGRESS CAN OVERTURN HIS VETO BY A 2/3 JOINT (BOTH HOUSES) MAJORITY VOTE. THE JUDICIAL BRANCH CAN KEEP THE PRESIDENT AND CONGRESS IN LINE BY DECLARING A PIECE OF LEGISLATION UNCONSTITUTIONAL. THE JUDICIAL IS KEPT IN CHECK BY CONSTITUTIONAL AMENDMENTS, AS WITH THE AMENDMENT CONCERNING INCOME TAX. THE CONGRESS HAS FURTHER CHECKS ON THE PRESIDENT BY REQUIRING A 2/3 JOINT MAJORITY VOTE ON ALL APPOINTMENTS, A 2/3 MAJORITY VOTE IS REQUIRED TO PASS ALL TREATIES, AND THE HOUSE OF REPRESENTATIVES HAS THE POWER TO STOP THE SPENDING OF PUBLIC FUNDS IF IT IS DEEMED

THAT THEY ARE BEING SPENT IMPRACTICALLY. FURTHER POWERS OF THE LEGISLATIVE AND EXECUTIVE BRANCHES OF CHECKING THE JUDICIAL INCLUDES THE CONGRESS DECIDING WHAT KINDS OF CASES THE FEDERAL COURTS WILL HEAR, AND WITH THE EXCEPTION OF THE SUPREME COURT, THE CONGRESS CONTROLS THE EXISTENCE OF ALL FEDERAL COURTS. UPON THE PRESIDENT FALLS THE BURDEN OF ENFORCING THOSE DECISIONS OF THE COURTS. FOR EXAMPLE. THE 1960's SUPREME COURT DECISION IN THE CASE OF BROWN VS. THE BOARD OF EDUCATION OF TOPEKA OVERTURNED THE 1896 DECISION OF PLESSY VS. FERGUSON IN THAT SEPARATE FACILITIES FOR BLACK AND WHITE PEOPLE IS NOT EQUAL JUST BY VIRTUE OF THE FACT THAT IT IS SEPARATE. WHEN THE DECISION WAS MADE FOR DESEGREGATION, IN LITTLE ROCK, ARKANSAS, THE PRESIDENT WAS FORCED TO SEND IN THE NATIONAL GUARD TO KEEP DOWN RIOTING.

ASIDE FROM POWERS GIVEN TO EACH AREA TO KEEP CHECK ON THE OTHER TWO, EACH HAS POWERS OF ITS OWN. FOR EXAMPLE, CONGRESS HAS THE POWER TO DECLARE WAR, ALLOCATE MONEY TO THAT WAR, AND CAN IMPEACH A PRESIDENT. BY THE CONSTITUTION, THE PRESIDENT IS CHARGED TO RECOMMEND TO CONGRESS "...SUCH MEASURES AS HE SHALL JUDGE NECESSARY... (AND TO) TAKE CARE THAT THE LAWS BE FAITHFULLY EXECUTED."8 THIS MEANS THAT THE PRESIDENT, WITH THE HELP OF HIS ADVISORS, FORMULATES A PLAN OF LEGISLATION TO SUBMIT TO CONGRESS. WHEN THE PRESIDENT SUBMITS HIS PLAN, HIS CABINET (ADVISORS) ARE NOT ALLOWED TO SIT IN ON THE SESSION TO HELP IN THE ENACTMENT OF THE PROGRAM.

OF COURSE THERE ARE SOME HOLES IN THE SYSTEM, AS IN ALL FORMS OF GOVERNMENT SINCE THE BEGINNING OF TIME. FOR EXAMPLE, THE GULF OF TONKIN RESOLUTION IN 1964. THIS WAS PASSED BY A NEAR UNANIMOUS VOTE IN CONGRESS, AND VIRTUALLY GAVE THE PRESIDENT A FREE HAND IN SENDING TROOPS TO GUARD VIETNAM FROM COMMUNIST AGGRESSION. TOGETHER WITH THIS POWER AND A LARGE MILITARY BUDGET, PRESIDENTS LYNDON B. JOHNSON AND RICHARD M. NIXON WAGED A WAR COSTLY IN BOTH MONEY AND LIVES THOUSANDS OF MILES FROM AMERICAN SHORES WITH NOT SO MUCH AS A FORMAL DECLARATION OF WAR FROM CONGRESS. BECAUSE THE VIETNAM EXPERIENCE HAS EVER SINCE BEEN A BLACK MARK ON AMERICAN HISTORY, THE POWER OF THE PRESIDENT TO SEND PEACE-KEEPING FORCES HAS BEEN BOTH DOUBTED AND PROTESTED.

IN THE FIRST THREE ARTICLES OF THE CONSTITUTION, IT OUTLINES THE RESPONSIBILITIES OF THE LEGISLATIVE, EXECUTIVE, AND JUDICIAL

BRANCHES RESPECTIVELY. IT LISTS POWERS GRANTED TO EACH, AND CHECKS OVER THE OTHER TWO. ACCORDING TO JUSTICE WILLIAM PATERSON IN 1795, "IT IS THE FORM OF GOVERNMENT DELINEATED BY THE MIGHTY HAND OF THE PEOPLE, IN WHICH CERTAIN FIRST PRINCIPLES OF FUNDAMENTAL LAW ARE ESTABLISHED."[9]

SO WHAT DOES MAKE AMERICA SO SPECIAL? WHAT IS IT THAT MAKES THOUSANDS OF PEOPLE COME TO A NEW LAND TO START WITH NOTHING? THE ANSWER IS SIMPLE--FREE AGENCY. AMERICA IS UNIQUE IN THAT A PERSON MAY BELONG TO ANY RELIGION THEY WISH, CHRISTIAN, MOSLEM, ATHEIST, WHATEVER. THEY MAY BELONG TO ANY POLITICAL PARTY THEY WISH--REPUBLICAN, DEMOCRAT, COMMUNIST, NAZI, FREEDOM, WHATEVER. THEY MAY GO ANYWHERE THEY WISH, TALK TO ANYONE THEY MEET. AND NO MATTER WHAT IT IS THAT THEY CHOOSE TO DO WITH THEIR LIFE IN AMERICA, THEY WILL NEVER HAVE THE FEAR OF GOVERNMENT OPPRESSION, BECAUSE OF A SIMPLE, YET EXTREMELY COMPLEX SYSTEM OF GOVERNMENT, WITH A BUILT-IN SAFETY PRECAUTION CALLED "CHECKS AND BALANCES."

END-NOTES

1) THE FIVE THOUSAND YEAR LEAP BY W. CLEON SKOUSEN, 1981
PUBLISHED BY THE FREEMEN INSTITUTE--PAGE 155 156

2) THE FIVE THOUSAND YEAR LEAP BY W. CLEON SKOUSEN, 1981
PUBLISHED BY THE FREEMEN INSTITUTE--PAGE 197

3) THE FIVE THOUSAND YEAR LEAP BY W. CLEON SKOUSEN, 1981
PUBLISHED BY THE FREEMEN INSTITUTE--PAGE 202

4) THE CONSTITUTION OF THE UNITED STATES BY PHILIP DORF, 1976
PUBLISHED BY OXFORD BOOK COMPANY, INC.--PAGE 48

5) A LAWYER LOOKS AT THE CONSTITUTION BY REX E. LEE,
PUBLISHED BY BRIGHAM YOUNG UNIVERSITY PRESS--PAGE 33

6) A LAWYER LOOKS AT THE CONSTITUTION BY REX E. LEE,
PUBLISHED BY BRIGHAM YOUNG UNIVERSITY PRESS--PAGE 33

7) A LAWYER LOOKS AT THE CONSTITUTION BY REX E. LEE,
PUBLISHED BY BRIGHAM YOUNG UNIVERSITY PRESS--PAGE 34

8) THE CONSTITUTION OF THE UNITED STATES BY PHILIP DORF, 1976
PUBLISHED BY OXFORD BOOK COMPANY, INC.--PAGE 48

9) COLLIER'S ENCYCLOPEDIA BY WILLIAM D. HALSEY (ET AL), 1968
PUBLISHED BY CROWELL COLLIER EDUCATIONAL CORPORATION PAGE 837

Senator HATCH. Well, that is terrific. That was a really good essay, and we appreciate having you here to deliver it. I think it is a wonderful thing.

I am going to reserve my question until after we finish here with all of the witnesses. Then I will ask each of you some questions.

So let us turn at this time to our representative from Illinois, Susan J. Matt. Susan, we would like to welcome you to the committee, and we will look forward to taking your essay at this time.

STATEMENT OF SUSAN J. MATT, DOWNERS GROVE, IL

Ms. MATT. Thank you.

Written during the Age of Enlightenment—a period in history in which men endeavored to establish an order and a pattern to their lives, their cultures, and their societies—the Constitution of the United States became a reflection of these endeavors. The framers of the Constitution, aware of the problems and disorder an autocratic state brought about, looked for alternatives to rule by one man. The system of government which seemed to promise the most order and the most reason was a government where power was vested in three separate branches. That no branch might seize absolute power, the framers sagely specified the rights and limits of each branch in governing the people.

Article I of the Constitution, that portion which sets forth the limits of the Congress' power, epitomizes both the preoccupation with and desire for order, as well as the sagacity and insight of the framers. Article I is based upon the fundamental realization that "it takes two to tango," or to be more timely, "it takes two to minuet." The authors of the Constitution, influenced by the writing of their contemporary, Jean Jacques Rousseau, who spoke of a "contract" existing between those governed and those who governed, wrote article I as a framework for a productive relationship between the people and their Congress. Those authors of the Constitution seemed to know that without such guidelines for the Congress to observe, the relationship between the populace and their lawmakers would not flourish and order would be lost.

Half of this relationship existing between the Congress and the populace rests on the faith people have in their elected representatives. The electorate puts its trust in the Senators and Representatives it places in Congress, making them custodians of the public's interest, guardians of the public concerns.

To meet this responsibility, Congress is granted a number of powers. These powers extend into a number of areas of concern. In dealing with one such concern, the Congress assumes the role of the guardian of general financial dealings of the Nation. Congress has the power to regulate commerce, to issue patents, to borrow money, to tax the people equally and/or tax products, in order that the profits of such taxes may be used for the common good. With these powers, Congress is a type of overseer of the capitalistic system of this country. And while Congress is given some control over the goings-on of the business world, there have been no attempts by Congress to make the financial structure part of a planned, closed, state-controlled economy.

Beyond this, Congress is granted the power to make uniform the other systems which run the Nation. Trying to establish uniformity, whether it be by passing naturalization laws, by establishing a system of weights and measures, by building roads, creating courts, or passing bankruptcy laws, is part of the struggle for order, for a pattern, which the framers first faced. And the electorate, wanting this uniformity, and also desiring order, allows the Congress to legislate it.

The framers, while certainly idealists to some extent, were not blind. Having recently emerged from a war, they realized that even a nation with well-regulated affairs might find it necessary to fight to defend this organization. Therefore, Congress was given the power to raise a militia, to maintain it, and ultimately to declare war. There exists a tacit understanding between the voters and Congress that this final power will not be overused to pursue petty rivalries or to have the Nation embroiled in an unnecessary war. Rather, the entire Nation's interests must be threatened for a war to be fought.

Part of legislating order and uniformity depends upon acting on not only what is written in article I, but what remains unsaid, as well. Congress, then, has the power to create programs, and to appropriate money for these programs, which, though not specified in the Constitution, "provide for the * * * general welfare" of the people. Congress is given this right in the section of article I which says the legislative branch has the power "to make all laws which shall be necessary * * * for carrying into Execution the foregoing powers." So whether Congress appropriates money for ADC benefits or passes the Job Training Partnership Act, the general public's special interests, unforeseen by the framers, are looked after by the Congress in this way.

At times, too, there are situations where the Congress creates agencies to carry out its ideas and laws. For instance, the Securities and Exchange Commission oversees stock and bond transactions. These transactions are supposed to be regulated by the Congress. That body, discovering that it was more efficient to delegate authority, created the SEC. The Environmental Protection Agency is another agency which carries out Congress' will. These agencies are instruments of Congress, justified by that clause which says the legislative branch has the ability "to make all laws which shall be necessary * * *."

Another way the framers sought order was through the limitations they placed upon Congress. Too often in the past, power had corrupted those who had possessed it. To avoid this, the Constitution includes a section which states an individual's writs of habeas corpus cannot be suspended. Hand in hand with this is the promise of equal treatment for all. The Constitution facilitates this by prohibiting unequal taxation. The framers also, in their attempt to create an egalitarian society of sorts, forbade the granting of titles of nobility. These men truly desired a nation where there were equal opportunities for success for all people. With this in mind, they specified that ports should not be discriminated against, nor should State export taxes exist. These limitations were included, as well as one which mandated that the Nation's money be appropri-

ated in such a way that the citizens could hold their leaders accountable.

These limitations were not included because the framers believed future legislators would be base and corrupt, but rather because they were painfully aware that when limitations and restrictions on power are not written down, they can easily be dispensed with. The suspension of civil liberties at various times in innumerable countries throughout Europe only supported the conviction that guidelines are most useful when they are recorded and easily referred to. These limitations were merely one further attempt by the authors of the Constitution to prevent disorder.

These restrictions on the Congress' power are a large part of the other half of the relationship between Congress and the people. Not only do the people trust their legislators, but the legislators must have a basic trust in the goodness of the people they represent. Their faith in the people must be staunch enough so that they follow the limitations set forth in article I. When the Congressman loses faith and contact with his constituents, basic rights can easily be eroded. Therefore, a relationship must exist that is based on reciprocal trust and awareness. Article I is the framework for this relationship because it allows the constituent to know what his rights are, reassures him that there is something substantial and tangible informing him of the boundaries of his liberties. By the same token, the Congressman becomes aware of where his power and the citizen's rights meet.

Article I, because it is so clear in setting down the groundwork for a constructive, productive relationship between these two components of the State—the people and their legislators—is successful in meeting the framers' intent. Certainly without the entire Constitution and more particularly without the first article, the way this Nation is run would be drastically different. One can easily conjure up images of lawmakers, unsure of their powers and the restrictions upon these powers, accomplishing little and inflicting much damage to the "proverbial ship of state." Presidents would perhaps attempt to levy taxes or declare wars, unemployed judges might create themselves courts, and general havoc would abound. Further, without article I, citizens would not know if their Representatives and Senators were carrying out their duties. In short, there would be no yardstick against which to measure the efficacy of a legislator.

To 20th century Americans, such scenes of governmental chaos seem a little fantastic. Having been raised secure in the knowledge that the Government was well regulated and was well organized, to imagine other scenarios is difficult. However, the authors of the Constitution knew that in the not too remote past, governmental disorder abounded. Therefore, their desire for stability and order was both an expression of ideals in harmony with the ideals of the Age of Enlightenment and also the expression of ideas in opposition to the historical realities familiar to the framers. In the past century, for instance, kings had been replaced by Cromwells and Cromwells by kings in England. Certainly events such as these prompted the well-ordered, carefully worded Constitution. Article I and the entire document would undoubtedly be viewed by the framers as successes. Because the article and the Constitution

were written with great insight and based upon the planned involvement of the people in their Government, order has resulted, stability has evolved.

[Prepared statement follows:]

PREPARED STATEMENT OF SUSAN J. MATT

[illegible] when men endeavored to establish an order and a pattern for their lives, their cultures, and their societies--the Constitution of the United States became a reflection of these endeavors. The framers of the Constitution, aware of the problems and disorder an autocratic state brought about, looked for alternatives to rule by one man. The system of government which seemed to promise the most order and the most reason was a government where power was vested in three separate branches. That no branch might seize absolute power, the framers sharply specified the rights and limits of each branch in governing the people.

Article I of the Constitution, that portion which sets forth the limits of the Congress' power, epitomizes both the preoccupation with and desire for order, as well as the sagacity and insight of the framers. Article I is based upon the fundamental realization that "It takes two to tango," or, to be more timely, "It takes two to minuet." The authors of the Constitution, influenced by the writing of their contemporary, Jean Jacques Rousseau, who spoke of a "contract" existing between those governed and those who governed, wrote Article I as a framework for a productive relationship between the people and their Congress. Those authors of the Constitution seemed to know that without such guidelines for the Congress to observe, the relationship between the populace and their lawmakers would not flourish and order would be lost.

"All of this relationship existing between the Congress and the populace rests on the faith people have in their elected representatives. The electorate puts its trust in the senators and representatives [illegible] Congress, [illegible] the public's interest, guardians of the public concerns.

To meet this responsibility, Congress is granted a number of powers. These powers extend into a number of areas of concern. In dealing with one such concern, the Congress assumes the role of the guardian of general financial dealings of the nation. Congress has the power to "regulate commerce," to issue patents, to borrow money, to tax the people (equally) and/or tax products, in order that the profits of such taxes may be used

for the common good. With these powers, Congress is a type of overseer of the capitalistic system of this country. And while Congress is given more control over the points on of the business world, there have been no attempts by Congress to make the financial structure part of a planned, closed, state-controlled economy.

Beyond this, Congress is granted the power to make uniform the other systems which run the nation. Trying to establish uniformity--whether it be by passing naturalization laws, by establishing a system of weights and measures, by building roads, creating courts, or passing bankruptcy laws -- is part of the struggle for order, for a pattern, which the framers first faced. And the electorate, wanting this uniformity, and also desiring order, allows the Congress to legislate it.

The framers, while certainly idealists to some extent, were not blind. Having recently emerged from a war, they realized that even a nation with well-regulated affairs might find it necessary to fight to defend this organization. Therefore, Congress was given the power to raise a militia, to maintain it, and ultimately to declare war. There exists a tacit understanding between the voters and Congress that this final power will not be exercised to pursue petty rivalries or to have the nation embroiled in an unnecessary war. Rather, the entire nation's interests must be threatened for a war to be fought.

Part of legislative order and uniformity depends upon acting on not only what is written in Article I, but what remains unsaid, as well. Congress, then, has the power to create programs--and to appropriate money for these programs, which, though not specified in the Constitution, "provide for the... general welfare" of the people. Congress is given this right in the section of Article I which says the legislative branch has the power "to make all laws which shall be necessary... for carrying into Execution the foregoing powers." So whether Congress appropriates money for AFDC benefits or passes the Job Training Partnership Act, the general public's special interests, unforseen by the framers, are looked after by the Congress in this way.

At times, too, there are situations where the Congress creates

agencies to carry out its ideas and laws. For instance, the Securities and Exchange Commission oversees stock and bond transactions. These transactions are supposed to be regulated by the Congress. That body, discovering that it was more efficient to delegate authority, created the SEC. The Environmental Protection Agency is another agency which carries out Congress' will. These agencies are instruments of Congress, justified by that clause which says the legislative branch has the ability "to make all laws which shall be necessary...."

Another [illegible] the framers could [illegible] fulfillment they placed upon Congress. Too often in the past, power had corrupted those who possessed it. To avoid this, the Constitution includes a section which states an individual's writs of habeas corpus can not be suspended. And in keeping with [illegible] the promise of equal treatment for all. The Constitution facilitates this by prohibiting unequal taxation. The framers also, in their efforts to create an egalitarian society of sorts, forbade the granting of titles of nobility. Those men truly desired a nation where there were equal opportunities for success for all people. With this in mind they specified that persons should not be discriminated against, nor should state export taxes exist. These limitations were included, as well as one which mandated that the nation's money be appropriated in such a way that the citizens could hold their leaders accountable.

These limitations were not included because the framers believed future legislators would be base and corrupt, but rather because they were painfully aware that when limitations and restrictions on power are not written down they can easily be dispensed with. The suspension of civil liberties at various times in innumerable countries throughout Europe only supported the conviction that guidelines are most useful when they are recorded and easily referred to. These limitations were merely one further attempt by the authors of the Constitution to prevent disorder.

These restrictions on the Congress' powers are a large part of the other half of the relationship between Congress and the people. Not only do the people trust their legislators, but the legislators must have a basic trust in the goodness of the people they represent.

Their relation to the people is so strong, so that things follow the limitations set forth in Article I . When the Congressman loses faith and contact with his constituents, basic rights can easily be eroded. Therefore, a relationship must exist that is based on reciprocal trust and awareness. Article I is the framework for this relationship because it allows the constituent to know what his rights are, reassures him that there is something substantial and tangible inform- in him of the boundaries of his liberties. By the same token, the Congressman becomes aware of where his power and the citizen's rights meet.

Article I, because it is so clear in setting down the groundwork for a constructive, productive relationship between these two components of the state--the people and their legislators -- is successful in meeting the framers' intent. Certainly without the entire Constitution and more particularly without the first article, the way this nation is run would be drastically different. One can easily conjure up images of lawmakers , unsure of their powers and the restrictions upon these powers, accomplishing little and inflicting much damage to the " proverbial " ship of state." Presidents would perhaps attempt to levy taxes or declare wars; unemployed judges might create themselves courts, and general havoc would abound. Further, without Article I , citizens would not know if their representatives and senators were carrying out their duties. In short, there would be no yardstick against which to measure the efficacy of a legislator.

To twentieth-century Americans, such scenes of governmental chaos seem a little fantastic. Having been raised secure in the knowledge that the government was well regulated and was well-organized, to imagine other scenarios is difficult. However, the authors of the Constitution knew that in the not too remote past, governmental disorder abounded . Therefore, their desire for stability and order was both an expression of ideals in harmony with the ideals of the Age of Enlightenment and also the expression of ideas in opposition to the historical realities familiar

to the framers. In the past century, for instance , kings had been re - placed by Cromwells and Cromwells by kings in England. Certainly events such as these prompted the well-ordered, carefully worded Constitution. Article I and the entire document would undoubtedly be viewed by the framers as successes. Because the article and the Constitution were written with great insight and based upon the planned involvement of the people in their government, order has resulted, stability has evolved.

Senator HATCH. Well, I just want to compliment all five of you. I think that your essays have been as good as any we have had over the last number of years. They have just been great. I think it is a real honor for you to represent your States before this committee.

Let me just ask you a few questions. We will start with you, Mr. Pinckard, and just come right across the board. OK?

You have all studied the checks and balances of the Consitution. Now, let me assure you that this is a very relevant topic today.

Within the last few months, the Senate has considered several issues dealing with the separation of powers. For instance, we debated the line-item veto which dealt with the extent to which the executive branch would be involved with legislating a budget. We debated a bill removing Supreme Court jurisdiction over the issue of school prayer, which is a very interesting thing.

We will soon debate tbe balanced budget amendment, or amendments—we put two of them out which will obligate the different branches of Government to refrain from spending more money than the Government has.

Now, each of your essays has dealt with the issues of today. Now, do you think that the Constitution needs to be amended to make the doctrine of checks and balances more secure? Do you think we should have a constitutional amendment in this area of checks and balances?

Mr. PINCKARD. I am not sure I understand your question, sir.

Senator HATCH. Do you think that with all of this controversy over various aspects pertaining to checks and balances, do you think we should amend the Constitution to strengthen checks and balances or should we keep it the way it is?

Mr. PINCKARD. I think the checks and balances system does not need to be changed. I believe it is fine the way it is right now. Maybe more amendments are needed, but not a change in the system itself.

Senator HATCH. So you would keep it exactly the way it is.

Mr. PINCKARD. Except for things such as the overspending, and especially the nuclear buildup.

Senator HATCH. So you think you would have a constitutional amendment to balance the budget?

Mr. PINCKARD. Well, maybe not a completely balanced budget because that will be very difficult to do, but at least try to help.

Senator HATCH. At least put pressure on Congress to do what it should do.

Mr. PINCKARD. Yes.

Senator HATCH. Good. Kathleen, how about you? What do you think? Should we change and strengthen the Constitution in this area?

Ms. PEARCE. I do not know. When the Founding Fathers designed the Constitution, they had what I believe to be really unbelievable foresight because this Constitution that we have has, you know, lasted us almost 200 years.

I think for the most part it ought to stay as it is, just because it is a system that has worked, and to quote a famous saying, "Do not fix it if it ain't broke."

Senator HATCH. Well, that is a pretty good comment. Stephen, how about you?

Mr. KENNEDY. I believe that the Constitution was created to be a changing document. In that aspect, I think that it should modify itself to the continuing generations of Americans. The balanced budget amendment as it is proposed now, I cannot accept. Certainly, I think something like that is needed, but not in the state that it is now. The Constitution, in my opinion, was meant to be changed. And I feel that some modifications have been and will continue to be useful.

Senator HATCH. OK.

Susan?

Ms. MATT. I think part of the reason the Constitution has succeeded so long is that it did not bind people too much. There were not that many set-down rules in the Constitution on how to interpret it and there was some flexibility. I think if you go and try to establish more rules, you bind people and the flexibility is lost. I think it might hamper more than help if we were to change it now.

Senator HATCH. OK. Tony, how about you?

Mr. VANIAS. I feel similar to what Susan has just said, because the way the Constitution has been written and has been followed for so many years. If you change it now it may throw things off, but I think the way it is now is fine, it just needs to be reiterated and emphasized a little more on spending. As Keith said, cut the spending. It is just ridiculous. Something needs to be done about that.

Senator HATCH. OK. Now, let me ask you this question: A study conducted a few years ago found that many high school students and graduates did not even know the basic facts about the Constitution. Such things as how many Senators are allotted to each State or how many Members of Congress there are. Now, what would each of you recommend to improve the understanding of the Constitution within our high schools and our colleges?

Let us start with you again, Mr. Pinckard. It may be unfair to always start with you, but you are doing pretty well.

Mr. PINCKARD. To improve this, as I said before, we learned about it a little bit in our history classes, not to a great extent, and if it were more emphasized in the curriculum, then the students would learn more about it.

Senator HATCH. OK.

Kathleen?

Ms. PEARCE. I really do not believe that it is emphasized enough, because, I do not know, the Constitution is probably the greatest document in the world, and if I were to go home right now and ask

my friends and fellow students just how much they know. I would not get much back.

It does need to be emphasized in the curriculum, but to emphasize it in the curriculum, you are going to have to go back and evaluate your teachers, because, just from my own high school experience, I would say over half of the teachers really do not care that much whether you know about it or not, in any subject.

Senator HAGEL. Is that right? Maybe we had better do something about that.

Ms. FRANCIS. Which is really kind of sad, I believe, but I will say there are teachers, three of which are history teachers, at my high school that do care and do emphasize things. Half of what I put in this came from my AP history teacher.

Senator HAGEL. That is great. Well, we think there are some great teachers, but we need to consistently work to get better teachers.

Ms. FRANCIS. We do. I will be honest with you, need a lot of better teachers, and just to close here, it does need to be emphasized a lot more in the curriculum.

Senator HAGEL. Thank you, Kathleen.

Stephen, how about you?

Mr. KAMERMAN. Well, I hate to sound contradictory, but I feel that it has been emphasized, at least in my experience, but it has fallen on deaf ears. There is an apathetic feeling among my peers which indicates that they just do not care about the Government and they do not want to know about it. I am uncertain what that stems from, perhaps it is confusion about the intricate system, but I feel that our Constitution has been emphasized, as I have certainly learned quite a bit about it. I just do not think that the students really care to hear what the Government has to say and what the Government is about.

Senator HAGEL. Susan?

Ms. MAYER. It is certainly an important element in our junior year history class and it is mandated that we take it, so it is not the problem of whether or not it is included. It is more that I think the teachers are not as enthusiastic as they could be, or if they are, they do not know how to communicate their enthusiasm for the subject to us. And perhaps if there were seminars or something similar to show them an effective way to teach the Constitution, it might help.

Senator HAGEL. OK.

Tony, how about you?

Mr. VARONA. Well, I feel that it is not emphasized enough in the public schools, or schools in general, for this matter. In a history book you have say one chapter on the Constitution. After you finish that, you take a test on it, and it is over with and you forget about it. But I think it is a very interesting topic and if students of high schools and of college really got into it and were motivated about it and were shown that it is a very interesting topic, that they need to know about, then I think a whole lot more people would get involved in it and would want to know about it.

Senator HAGEL. OK. Now, we are going to deal with you on this question, Tony. I mentioned that today marks the 180th anniversary of the Constitution. Two years from now in 1997 we will have

date, it will be the 200th anniversary or the bicentennial of the Constitution.

Do you have any suggestions, each and every one of you, as to how we might better celebrate the 200-year history of the Constitution? What could we do to celebrate the birth of our country and the birth of our Constitution?

It is a tough question.

What would you recommend the people out there do to get more involved with the Constitution?

Mr. VANIAS. Well, I think publicity would be a start.

Senator HATCH. Publicity?

Mr. VANIAS. This would be a start. Let everybody know what is going on. How many people do you think would know that this day 2 years from now, is the birthday of the Constitution?

Senator HATCH. Well, publicity would get us all interested, or at least help us to want to get interested. That is a good suggestion. Susan.

Ms. MATT. The same kind of excitement that came from 1776 to 1976, that 200-year anniversary, should somehow be transmitted through publicity to the people, again. Maybe you could have more essay contests or even something that is less esoteric for more of the students and more of the people involved; something that would involve more people directly with the Constitution.

Senator HATCH. OK. How about you, Stephen?

Mr. KENNEDY. I agree with every statement that they have made thus far. I also think that people should become more aware of how successful this document has been and how unique it is in the world. Perhaps that can lead to a new awareness of the Constitution and new action upon it.

Senator HATCH. OK. How about you, Kathleen?

Ms. PEARCE. I go with what Susan said on publicity and whatnot. Until last night I did not know that this was the day that the Constitution was signed, which is really kind of a humiliating thought. But I was just kind of remembering on the 40th anniversary of the invasion of Normandy and they had a lot of things coming out. Life magazine, Time magazine, practically all the major networks had some kind of a special on it, things like this. The same with the bicentennial. They were coming out with all of these things on the beginning of the country.

Well, there would not be any country if there was not any Constitution. And they need to really publicize this, to make people realize just what it is they have.

Senator HATCH. That is great. How about you, Keith?

Mr. PINCKARD. Well, I agree with what Kathleen and Susan have been saying, like the 1776–1976, 200-year anniversary. Everybody knew about that, but now, hardly anybody knows about the anniversary of the adoption of the Constitution. This essay contest is a great way to arouse interest with respect to the Constitution, however, to generate more enthusiasm and get more students familiar with the Constitution, perhaps we would need a different means than an essay contest.

Senator HATCH. Well, that is great. I think this is just one way that we can create some interest in our respective States.

Every year, each member of this subcommittee conducts an essay contest in his State, and, as you know, we invite the winners, such as yourself, to testify here. We are going to put your statements into the Record so that you will receive a Congressional Record containing your statement. That is an honor that only five States are given as a result of our rules here in the committee.

So I just want to thank each one of you for being willing to participate, for the excellent essays that you have prepared, for the excellent testimony you have given here today and for your interest in and observance of the Constitution of the United States, which happens to be the longest lasting Constitution in the history of the world. It is still working, it is still viable, and one of the reasons it is, is because of this separation of powers document that each of you have studied so well and written so magnificently about.

We are very proud of all of you, and with that, we are going to recess our committee until further notice.

Thanks for being here and thanks for your responses here today.

[Whereupon, at 10:50 a.m., the subcommittee adjourned, subject to the call of the Chair.]

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